

Seyfarth Shaw LLP  
Ellen E. McLaughlin (*Admitted Pro Hac Vice*)  
E-mail: emclaughlin@seyfarth.com  
Cheryl A. Luce (*Admitted Pro Hac Vice*)  
E-mail: cluce@seyfarth.com  
233 South Wacker Drive, Suite 8000  
Chicago, Illinois 60606-6448  
Telephone: (312) 460-5000  
Facsimile: (312) 460-7000

SEYFARTH SHAW LLP  
Kristen M. Peters (SBN 252296)  
E-mail: kmpeters@seyfarth.com  
2029 Century Park East, Suite 3500  
Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
Facsimile: (310) 201-5219

Attorneys for Defendant  
UNITED STATES SOCCER FEDERATION

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALEX MORGAN, MEGAN RAPINOE,  
BECKY SAUERBRUNN, CARLI LLOYD,  
MORGAN BRIAN, JANE CAMPBELL,  
DANIELLE COLAPRICO, ABBY  
DAHLKEMPER, TIERNA DAVIDSON,  
CRYSTAL DUNN, JULIE ERTZ,  
ADRIANNA FRANCH, ASHLYN HARRIS,  
TOBIN HEATH, LINDSEY HORAN, ROSE  
LAVELLE, ALLIE LONG, MERRITT  
MATHIAS, JESSICA MCDONALD,  
SAMANTHA MEWIS, ALYSSA NAEHER,  
ELLEY O'HARA, CHRISTEN PRESS,  
MALLORY PUGH, CASEY SHORT,  
EMILY SONNETT, ANDI SULLIVAN  
AND MCCALL ZERBONI,

Plaintiffs,

v.

UNITED STATES SOCCER  
FEDERATION, INC.,

Defendant.

Case No. 2:19-cv-01717-RGK-AGR

**DEFENDANT UNITED STATES  
SOCCER FEDERATION'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO TRANSFER VENUE  
PURSUANT TO THE FIRST-TO-  
FILE RULE**

Date : July 15, 2019  
Time : 9:00 a.m.  
Courtroom : 850  
Judge: : Hon. R. Gary Klausner

Complaint Filed: March 8, 2019

1 Defendant United States Soccer Federation, Inc. (“Defendant” or “U.S. Soccer”),  
2 submits this memorandum of points and authorities in support of its motion to transfer  
3 venue to the Northern District of California where a previously-filed suit involving the  
4 same legal issues and overlapping parties is already pending.

5 **I. INTRODUCTION**

6 This action is duplicative of an earlier-filed action pending before Judge James  
7 Donato in the United States District Court of the Northern District of California, *Solo v.*  
8 *U.S. Soccer Federation*, Case No. 3:18-cv-05215-JD. (Ex. A, *Solo* Complaint). The *Solo*  
9 action was initiated in August 2018 alleging a violation of the Equal Pay Act and sex  
10 discrimination under Title VII based on alleged disparities in pay to members of the  
11 United States Senior Women’s National Team (“USWNT”) as compared to members of  
12 the United States Senior Men’s National Team (“USMNT”). More than six months later,  
13 in March 2019, Plaintiffs filed the instant action, asserting virtually identical claims  
14 against U.S. Soccer. This action should be transferred to the Northern District of  
15 California pursuant to the first-to-file rule. Actively proceeding with the two cases  
16 simultaneously will result in a significant waste of the Court’s resources and cause  
17 significant prejudice to U.S. Soccer, requiring it to defend against virtually identical  
18 claims in two different forums. Allowing both cases to proceed simultaneously could  
19 also result in inconsistent rulings on these claims. Additionally, where, as here, the first-  
20 filed action is further along procedurally, the application of the first-to-file rule is  
21 particularly warranted because it reinforces the rule’s underlying goals of promoting  
22 judicial economy and avoiding duplicative discovery, inconvenience, and the risk of  
23 inconsistent judgments. Based on the chronology of the lawsuits, the similarity of the  
24 parties, and the similarity of the issues, this Court should apply the first-to-file rule and  
25 transfer the instant action to the Northern District of California where it can be  
26 consolidated with the first-filed *Solo* action.

## II. BACKGROUND

### A. The First-Filed *Solo* Action

On August 24, 2018, Hope Solo (“Solo”), a former USWNT player, filed a lawsuit against U.S. Soccer in the Northern District of California alleging violations of the Equal Pay Act, 29 U.S.C. § 206(d), (“EPA”) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), *Solo v. U.S. Soccer Federation*, Case. No. 3:18-cv-05215-JD. Solo’s claims stem from her allegations that U.S. Soccer paid members of the USMNT more for substantially equal work, and that the pay differential was the result of sex discrimination, even though the USWNT and USMNT play in separate physical spaces, perform different work, and negotiated separate collective bargaining agreements. (*Solo v. U.S. Soccer*, Dkt. 1.) U.S. Soccer moved to dismiss the *Solo* Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and also moved to transfer the action to the Northern District of Illinois pursuant to 28 U.S.C. § 1404(a). (*Solo v. U.S. Soccer*, Dkt. 25, 29.) Oral argument was held on U.S. Soccer’s motion to transfer venue on February 21, 2019, and the matter was then stayed pending resolution of Plaintiffs’ Judicial Panel on Multidistrict Litigation (“JPML”) petition. (*Solo v. U.S. Soccer*, Dkt. 47.)

### B. The Later-Filed *Morgan* Action

On March 8, 2019, 28 current players of the USWNT filed this action alleging violations of the EPA and Title VII nearly identical to those alleged in the *Solo* action. On the same day they filed their Complaint in this Court, Plaintiffs filed a motion for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, *In Re: United States Soccer Federation Pay Discrimination Litigation*, MDL No. 2890.<sup>1</sup> As

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<sup>1</sup> On April 12, 2019, U.S. Soccer submitted its opposition to Plaintiffs’ motion for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, arguing, as it does here, that the far simpler and more efficient alternative to § 1407 centralization is to consolidate the two pending actions in the Northern District of California under the “first-to-file” rule and that all three factors considered support transfer. U.S. Soccer also

1 Plaintiffs acknowledge in their § 1407 motion to transfer, the *Morgan* action “makes  
 2 precisely the same allegations and asserts the same claims” as the *Solo* action. (MDL No.  
 3 2890, Dkt. 1-1 p. 2). Namely, Plaintiffs allege that U.S. Soccer paid members of the  
 4 USMNT more for substantially equal work, and that the pay differential was the result of  
 5 sex discrimination. (Dkt. 1.) The *Morgan* action is brought as a collective and class  
 6 action and defines the class Plaintiffs seek to represent as “all current and/or former WNT  
 7 players who were members of the WNT at any time from February 4, 2015” to present,  
 8 (Dkt. 1 ¶91), which would include Solo.

### 9 **III. ARGUMENT**

#### 10 **A. The First-To-File Rule**

11 The well-established first-to-file rule is a doctrine of federal comity that promotes  
 12 judicial efficiency and avoids conflicting judgments. It provides that where there are  
 13 duplicative federal actions, a first-filed lawsuit should have priority and the district court  
 14 of the later-filed action may transfer the action if the same parties and issues are already  
 15 at issue in a proceeding before another district court. *Kohn Law Grp., Inc. v. Auto Parts*  
 16 *Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015). The first-to-file rule is designed to  
 17 “avoid placing an unnecessary burden on the federal judiciary, and to avoid the  
 18 embarrassment of conflicting judgments.” *Church of Scientology v. U.S. Dep’t of the*  
 19 *Army*, 611 F.2d 738, 750 (9th Cir. 1979).

20 In determining the applicability of the first-to-file rule, the Court considers three  
 21 threshold factors: the “chronology of the lawsuits, similarity of the parties, and similarity  
 22 of the issues.” *Kohn*, 787 F.3d at 1240; *see Tricom Research, Inc. v. Tactical Support*  
 23 *Equipment, Inc.*, 2008 WL 11338513, at \*1 (C.D. Cal. June 27, 2008) (Klausner, J.). If  
 24 these factors are satisfied, the Court has discretion to transfer, stay, or dismiss the action  
 25 in favor of the first-filed action. *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625  
 26 (9th Cir. 1991). The Ninth Circuit has underscored that the purpose of the first-to-file

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 28 advised the MDL panel in its opposition that it would be filing a motion to transfer in the  
*Morgan* action pursuant to the first-to-file rule. (MDL No. 2890, Dkt. 15 pp. 6-9).

rule is “to promote efficiency” and warned that the rule “should not be disregarded lightly.” *Church of Scientology v. U.S. Dep’t of the Army*, 611 F.2d 738, 750 (9th Cir. 1979). Thus, “unless compelling circumstances justify departure from the rule, the first-filing party should be permitted to proceed without concern about a conflicting order being issued in the later-filed action.” *EFG Bank AG, Cayman Branch v. Lincoln Nat’l Life Ins. Co.*, No. CV 17-817-JFW(KSx), 2017 WL 5635022, at \*2 (C.D. Cal. June 8, 2017); *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982) (“Normally sound judicial administration would indicate that when two identical actions are filed in courts of concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit and no purpose would be served by proceeding with a second action.”).

## **B. All Three Factors Support Transfer**

Each of the first-to-file rule’s threshold considerations—chronology of the lawsuits, similarity of the parties, and similarity of the issues—supports application of the rule and transfer of this action to the Northern District of California.

### **1. Solo Was Filed Before This Action**

The first factor, regarding the chronology of the actions, is easily satisfied because the *Solo* action was filed on August 24, 2018, more than six months before the filing of the instant action on March 8, 2019.

### **2. The Parties In The Two Actions Are Substantially Similar**

As to the second factor, the similarity of the parties in each case, “the first-to-file rule does not require exact identity of the parties, ... only substantial similarity of parties.” *Kohn*, 787 F.3d at 1240. Here, U.S. Soccer is the sole defendant in both the *Solo* action and the *Morgan* action. Although *Solo* is brought by a single player, the *Morgan* action is brought by 28 players as a collective and class action. The *Morgan* action defines the class Plaintiffs seek to represent as “all current and/or former WNT players who were members of the WNT at any time from February 4, 2015” to present, (*Morgan* Complaint ¶ 91), which, as Plaintiffs must concede, would include *Solo*. Accordingly,

1 “the parties are effectively the same.” *Schwartz v. Frito-Lay N. Am.*, No. C-12-  
 2 02740(EDL), 2012 WL 8147135, at \*3 (N.D. Cal. Sept. 12, 2012) (granting motion to  
 3 transfer pursuant to the first-to-file rule and concluding that “the parties are effectively  
 4 the same” where the putative class would include the named plaintiff in the other action);  
 5 *see EFG Bank AG*, 2017 WL 5635022, at \*4 (granting motion to transfer under the first-  
 6 to-file rule and concluding that the parties in the two actions were “substantially similar”  
 7 where the named plaintiffs in one action were members of the putative class as defined in  
 8 the other action); *Prime Healthcare Servs., Inc. v. Harris*, No. EDCV 15-1934-GHK  
 9 (DTBx), 2016 WL 6693152, at \*3 (C.D. Cal. Mar. 31, 2016) (“The [first-to-file] rule is  
 10 satisfied if some [of] the parties in one matter are also in the other matter, regardless of  
 11 whether there are additional unmatched parties in one or both matters.”); *Calderon v.*  
 12 *Cargill, Inc.*, No. CV 13-7046 (JEMx), 2013 WL 12205633, at \*1-2 (C.D. Cal. Dec. 10,  
 13 2013) (granting motion to transfer pursuant to first-to-file rule and finding similarity of  
 14 parties where the defendant was the same in both actions and where the putative class  
 15 involved “at least some of the same individuals” as the other action).

### 16 **3. The Central Issues To Be Litigated Are the Same In Both Cases**

17 The issues in the two actions need only be substantially similar to satisfy the  
 18 “similarity of issues” factor; “[e]xact parallelism is not required.” *Tricom*, 2008 WL  
 19 11338513 at \*2 (quoting *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1981)).  
 20 Here, Plaintiffs do not dispute that the substantially similar issues will be litigated in both  
 21 cases; rather, they *admit* that this action “makes precisely the same allegations and asserts  
 22 the same claims” as the first-filed *Solo* action. (MDL No. 2890, Dkt. 1-1 p. 2). Indeed,  
 23 both actions bring claims under the Equal Pay Act and Title VII alleging that the same  
 24 conduct and practices violate the statutes. Accordingly, the claims and issues in this  
 25 action are substantially similar to those in the first-filed *Solo* action for the first-to-file  
 26 rule to apply. *See Calderon v. Cargill, Inc.*, No. CV-13-7046-GHK (JEMx), 2013 WL  
 27 12205633, at \*2 (C.D. Cal. Dec. 10, 2013) (granting motion to transfer pursuant to first-  
 28 to-file rule and finding similarity of issues despite later-filed action containing additional

claims, noting that “this does not defeat the substantial similarity of the issue in the two cases”); *Hill v. Robert's Am. Gourmet Food, LLC*, No. 13-CV-00696-YGR, 2013 WL 3476801, at \*5 (N.D. Cal. July 10, 2013) (rejecting argument that the first-to-file rule should not apply to later-filed action involving slightly different issues because such “slight variations in the allegations [were] inconsequential” and “the central issues are the same”); *Schwartz v. Frito-Lay N. Am.*, No. C-12-02740(EDL), 2012 WL 8147135, at \*3 (N.D. Cal. Sept. 12, 2012) (“The issues need not be precisely identical for the first-to-file rule to apply; the rule can apply even if the later-filed action brings additional claims.”).

**C. Equity Does Not Warrant Departure From The First-To-File Rule**

Even if the first-to-file rule is found applicable, the Court may, in its discretion, decline to apply the rule for “reasons of equity.” *Youngevity Int'l, Inc. v. Renew Life Formulas, Inc.*, 42 F. Supp. 3d 1377, 1383 (S.D. Cal. 2014) (citing *Kerotest Mfg. Co. v. C–O–Two Fire Equip. Co.*, 342 U.S. 180, 183-84 (1952)). “Exceptions to the first-to-file rule include bad faith, anticipatory suit, and forum shopping.” *Id.* “However, unless compelling circumstances justify departure from the rule, the first-filed action should be permitted to proceed.” *Tricom*, 2008 WL 11338513 at \*3 (noting the “high burden necessary” for plaintiff to satisfy to warrant application of the exception).

Here, there is no basis upon which to disregard and depart from the first-to-file rule. To the contrary, the interest of justice weighs in favor of transferring the *Morgan* action to the same District Court where the earlier-filed *Solo* action is pending. Doing so will avoid duplicative litigation, conserve judicial resources, and prevent inconsistent results, thereby advancing the very purpose of the first-to-file rule.

1 **IV. CONCLUSION**

2 Because the chronology, similarity of the parties, and similarity of the issues weigh  
3 strongly in favor of transfer, U.S. Soccer requests that the Court grant its motion to  
4 transfer venue to the Northern District of California pursuant to the first-to-file rule.

5 DATED: May 23, 2019

SEYFARTH SHAW LLP

6  
7 By: /s/ Ellen E. McLaughlin

8 Ellen E. McLaughlin

9 Cheryl A. Luce

Kristen M. Peters

Attorneys for Defendant

10 UNITED STATES SOCCER

FEDERATION